



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/905,255	07/13/2001	Robert E. Dvorak	BLFR 1007-1	4408

22470 7590 12/22/2003

HAYNES BEFFEL & WOLFELD LLP
P O BOX 366
HALF MOON BAY, CA 94019

EXAMINER

HIRL, JOSEPH P

ART UNIT	PAPER NUMBER
----------	--------------

2121

DATE MAILED: 12/22/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

2

Office Action Summary

Application No.

09/905,255

Applicant(s)

DVORAK ET AL.

Examiner

Joseph P. Hirl

Art Unit

2121

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-55 are pending in this application.

2. The claims and only the claims form the metes and bounds of the invention.

"Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

3. Examiner's Opinion: The prior art by Cessna addresses a merchandise planning system for the purpose of clustering (classifying) related information to facilitate effective management. To achieve this goal, the proposed invention is anticipated albeit in a generalized hierarchical manner. To one of ordinary skill in the art, many of the dependent claims are known and do not constitute new art. The answer to the question as to what has been invented cannot be business alternatives known to the market place.

Specification

4. The specification is objected to because of the following:

Page 1, line 9, delete "unassigned" and insert -09/888,336--.

Page 1, line 24, delete "unassigned" and insert -09/905,255--.

Page 1, lines 24-25, delete "the same day as this application" and insert -13 July 2001--.

These objections must be corrected.

Abstract

5. Page 127, line 4, delete "ways the" and insert -ways for--.

Page 127, lines 4-6, delete -Aspects ... this abstract. The language should be clear and concise. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 40-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The terms desired and consistent are relative terms and render the claim indefinite.

Claim Rejections - 35 USC § 101

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 28-55 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The practical application test requires that a useful, concrete and tangible result be accomplished. Claims 28-55 represent abstract methodology therefore are not in the technological arts and are intangible. The consequence is non-statutory.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

11 The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

12. Claims 1-55 are rejected under 35 U.S.C. 102(e) as being anticipated by Cessna et al (USP 6,510,420, referred to as **Cessna**).

Claim 1

Cessna anticipates projecting unit inventory and unit sales for a plurality of items at a plurality of locations (**Cessna**, Figs. 1, 2; c 1, l 50-67; c 2, l 1-59) utilizing current inventory of the items at the locations (**Cessna**, Fig. 2; c 3, l 45-52), projected deliveries of the items to the locations (**Cessna**, c 3, l 45-52; c 7, l 12-50; c11, l 16-22), and projected demand for the items at the locations (**Cessna**, c 3, l 45-52; c 7, l 12-50; c11, l 16-22); and applying planned transaction pricing to derive projected dollar inventory and projected dollar sales of the items at the locations (**Cessna**, c 3, l 45-52; c 7, l 12-50;

Art Unit: 2121

c11, l 16-22; Examiner's Note (EN): the purpose of the model is a merchandise planning system with a structure..objects...data...system...algorithm which will derive dollar inventory and dollar sales as a step in clustering similar characteristics).

Claim 2

Cessna anticipates rolling up at least one of the projected unit inventory, unit sales, dollar inventory or dollar sales from the items to one or more aggregate levels (Cessna, c 3, l 45-52; c 7, l 12-50; c11, l 16-22; EN: a necessary event to achieve clustering).

Claim 3

Cessna anticipates including projecting gross margins on sales of the items across the locations, utilizing the projected dollar sales of the items at the locations, actual costs for the items sold from the current inventory, and projected costs for the items sold from the projected deliveries (Cessna, c 2, l 1-16; c 3, l 45-52; c 7, l 12-50; c11, l 16-22).

Claim 4

Cessna anticipates rolling up at least one of the projected unit inventory, unit sales, dollar inventory, dollar sales, or gross margin on sales from the items to one or more aggregate levels (Cessna, c 2, l 51-59).

Claims 5, 6

Cessna anticipates at least some of the projected deliveries are notional deliveries of the items to meet the projected demand for the items, unconstrained by

Art Unit: 2121

inventory budgets (**Cessna**, c 2, l 51-59; EN: such action would be formed in a hierarchical relationship in the planning model as part of the multi dimensional features)

Claims 7, 8, 9, 10, 11, 12,

Cessna anticipates the notional deliveries only start after specified order coverage cycles for the items (**Cessna**, c 2, l 51-59; EN: this would be part of the dynamic creation of the hierarchical levels and the level to level relationships).

Claim 13, 14, 15

Cessna anticipates the projecting of the unit sales is carried out for weekly periods, including event adjustments such as promotions (**Cessna**, c 2, l 51-59; c 5, l 31-40; c 2, l 1-6).

Claim 16

Cessna anticipates the projecting of the unit sales is carried out for daily or more frequent periods (**Cessna**, c 2, l 51-59; EN: the structure would vary...dynamic adjustment).

Claim 17

Cessna anticipates the projecting of unit sales takes into account stockouts of the items at the locations (**Cessna**, c 2, l 51-59; c 6, 39-49).

Claim 18

Cessna anticipates the projecting of unit sales takes into account in dates and out dates for the items (**Cessna**, c 2, l 51-59; c 5 l 31-39).

Art Unit: 2121

Claim 19, 20

Cessna anticipates the out date is a desired date for selling out one or more of the items (**Cessna**, c 2, l 51-59; c 5 l 31-39).

Claim 21

Cessna anticipates a plurality of the in dates and out dates for a particular item are associated with a plurality of the locations (**Cessna**, c 2, l 51-59; c 5 l 31-39).

Claim 22

Cessna anticipates the projecting of unit sales takes into account last purchase order receipt dates associated with the items (**Cessna**, c 2, l 51-59; c 5 l 31-39; EN: part of the dimensional modeling).

Claim 23

Cessna anticipates a plurality of the last purchase order receipt dates for a particular item are associated with a plurality of the locations (**Cessna**, c 2, l 51-59; c 5 l 31-39; EN: part of the dimensional modeling).

Claim 24

Cessna anticipates unit sales takes into account causal events affecting demand for the items (**Cessna**, c 2, l 51-59; c 6, l 17-29; EN: part of the multidimensional attributes).

Claim 25, 26, 27

Cessna anticipates at least one of the causal events is a promotion, markdown, presentation (**Cessna**, c 2, l 51-59; c 6, l 17-29; EN: part of the multidimensional attributes).

Claim 28

Cessna anticipates setting sales or revenue budgets for groups of items (**Cessna**, c 2, l 51-59; c 5 l 16-39); projecting sales of the items (**Cessna**, c 2, l 51-59; c 5 l 16-39); setting notional deliveries, in addition to projected deliveries for outstanding orders, to meet the projected sales (**Cessna**, c 2, l 51-59; c 5 l 16-39; EN: resides in a hierarchical manner within a dimension); prorating the sales or revenue budgets for the groups of items (**Cessna**, c 2, l 51-59; c 5 l 16-39); and reporting the prorated sales or revenue budgets and the projected sales for the items, rolled up, if necessary, to a level of detail equivalent to the prorated sales or revenue budgets (**Cessna**, c 2, l 51-59; c 5 l 16-39).

Claim 29

Cessna anticipates calculating reduced notional deliveries consistent with prorated inventory budgets (**Cessna**, c 2, l 51-59; c 5 l 16-39); and calculating lost sales resulting from the reduced notional deliveries (**Cessna**, c 2, l 51-59; c 5 l 16-39).

Claims 30, 31

Cessna anticipates the notional deliveries are constrained by lead time for ordering and obtaining delivery of the items (**Cessna**, c 2, l 51-59; c 5 l 16-39).

Claim 32

Cessna anticipates the projected sales of the items are projected on a daily or more frequent basis (**Cessna**, c 2, l 51-59; c 5 l 16-56).

Art Unit: 2121

Claims 33, 34, 35, 36, 37

Cessna anticipates the projected sales of the items are projected on a location-by-location basis (**Cessna**, c 2, l 51-59; c 5 l 31-39).

Claims 38, 39, 40, 41

Cessna anticipates the notional deliveries are based in part on optimal stocking levels (**Cessna**, c 2, l 51-59; c 5 l 41-67).

Claim 42, 43

Cessna anticipates the notional deliveries are consistent with presentation quantities for the items at respective selling locations associated with the items (**Cessna**, c 2, l 51-59; c 5 l 31-39).

Claim 44, 45

Cessna anticipates the notional deliveries are set with reference to a causal calendar of events (**Cessna**, c 2, l 51-59; c 5 l 31-55).

Claim 46, 47

Cessna anticipates the notional deliveries take into account planned promotions (**Cessna**, c 2, l 51-59; c 5 l 14-55).

Claim 48, 49

Cessna anticipates the notional deliveries are consistent minimum order quantities for the items (**Cessna**, c 2, l 51-59; c 5 l 31-39).

Claim 50, 51

Cessna anticipates prorating is based on the projected sales of the items (**Cessna**, c 2, l 51-59; c 5 l 31-39).

Art Unit: 2121

Claims 52, 53, 54, 55

Cessna anticipates the projected sales of the items include recapture of projected lost sales due to stockouts of the item (**Cessna**, c 2, l 51-59; c 5 l 31-39).

Conclusion

13. The prior art of record and not relied upon is considered pertinent to applicant's disclosure.

Shukla, USP 6,456,997

Kagami et al, USP 5,974,422

Homma et al, USP 5,179,643

Hideki, JP 2000-266843

14. Claims 1-55 are rejected.

Correspondence Information

Any inquiry concerning this information or related to the subject disclosure should be directed to the Examiner, Joseph P. Hirl, whose telephone number is (703) 305-1668. The Examiner can be reached on Monday – Thursday from 6:00 a.m. to 4:30 p.m.

Art Unit: 2121

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anil Khatri can be reached at (703) 305-0282.

Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks,
Washington, D. C. 20231;

or faxed to:

(703) 746-7239 (for formal communications intended for entry);

or faxed to:

(703) 746-7290 (for informal or draft communications with notation of "Proposed" or "Draft" for the desk of the Examiner).

Hand-delivered responses should be brought to:

Receptionist, Crystal Park II
2121 Crystal Drive,
Arlington, Virginia.

Joseph P. Hirl



December 11, 2003



ANIL KHATRI
SUPERVISORY PATENT EXAMINER